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Before the
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)
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)

Redevelopment of Spectrum to)
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)
)

ET Docket No. 92-9

To: The Commission

OPPOSITION TO PETITION TO SUSPEND PROCEEDING

Time Warner Telecommunications Inc. ("TWT"), pursuant to Section 1.45 of the Commission's Rules, 47 C.F.R. § 1.45 (1991), hereby opposes the Petition to Suspend Proceeding filed by the Association of American Railroads, Large Public Power Council and the American Petroleum Institute (collectively "Petitioners") in the above-captioned rulemaking proceeding.

I. Introduction and Summary

TWT is a subsidiary of Time Warner Inc., a world leader in the fields of media and entertainment, including cable television, magazine, book and music publishing, recorded music, motion pictures and television series production. TWT was formed primarily to develop and operate businesses involving emerging telecommunications technologies. As such, TWT has actively participated in the proceeding before the Federal Communications Commission ("FCC" or "Commission") to allocate new spectrum for

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and authorize personal communications services ("PCS"). Pursuant to the appropriate FCC authorizations, Time Warner is conducting PCS experiments and based on this work has filed a pioneers preference request.^{1/} Suspension of the instant proceeding would adversely affect TWT by impeding its efforts, as well as those of other PCS innovators, to initiate PCS service in the United States in a prompt and timely manner.

The FCC adopted a Notice of Proposed Rulemaking on January 16, 1992, proposing to authorize 220 MHz of spectrum between 1.85 and 2.20 GHz for emerging telecommunications technologies.^{2/} The specific frequencies are in the 1.85-1.99, 2.11-2.15 and 2.16-2.20 GHz bands.^{3/} The FCC proposes that all existing private and common carrier fixed microwave operations currently using these bands be eligible for relocation to any of the higher frequency fixed microwave bands.^{4/}

^{1/} Time Warner Cable Group holds authorizations to engage in PCS experiments in New York City; Cincinnati, Ohio; Columbus, Ohio; and St. Petersburg, Florida.

^{2/} Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Notice of Proposed Rulemaking, ET Docket No. 92-9 (released February 7, 1992) ("NPRM").

^{3/} While the rulemaking does not propose to authorize specific new services to the 220 MHz of spectrum, the FCC anticipates that the first use of the emerging technologies band will be for the creation of PCS. The FCC intends to initiate a rulemaking proceeding to authorize PCS in this band later this year. Id., ¶ 29.

^{4/} Id., ¶ 20.

Petitioners request that this proceeding be held in abeyance until the Commission fully investigates the feasibility of using federal government spectrum for emerging technologies or for the relocation of incumbent users of the 2 GHz band. More specifically, Petitioners contend that the instant proceeding should be suspended until (1) the FCC formally requests the National Telecommunications and Information Administration ("NTIA") to make underutilized federal government spectrum available either for emerging technologies or for the relocation of current 2 GHz users and receives a formal response from NTIA, (2) the FCC's Office of Engineering and Technology ("OET") thoroughly evaluates the 1.71-1.85 GHz and 2.20-2.29 GHz federal government spectrum bands, and (3) interested parties are given an opportunity to comment on OET's report.^{5/} TWT supports an evaluation by the FCC and NTIA of the availability for non-government use of frequencies in the 1.71-1.85 or 2.20-2.29 GHz band provided such an investigation does not delay action in the instant proceeding or delay the early inauguration of PCS.

^{5/} Petition to Suspend Proceeding at 4-5 ("Petition").

II. Suspension of the Instant Proceeding While the Commission Evaluates the Allocation of Federal Government Spectrum Is Not in the Public Interest

A. The Study Petitioners Request Would Require a Significant Investment of Time and May Not Identify Spectrum Immediately Available for Emerging Technologies

Petitioners claim that the rapid development of emerging technologies can be accomplished by making available underutilized federal government spectrum for emerging technologies or for the relocation of incumbent users of the 2 GHz band.^{6/} Petitioners call for an OET study of 230 MHz of federal government spectrum in the 2 GHz band -- specifically the frequencies at 1.71-1.85 GHz and 2.20-2.29 GHz -- which they assert are "vastly underutilized" in comparison with the 220 MHz of spectrum used by non-government entities identified by the FCC for reallocation in this proceeding.^{7/} TWT supports the initiation of the requested OET study, which it believes is a laudable proposal. However, there is no benefit to be gained by making such a study a precondition to the allocation of spectrum for PCS because such an OET investigation would require a significant period of time. Suspending the instant proceeding and failing to expeditiously address the pressing need to authorize spectrum for emerging technologies, including PCS, while the FCC examines the possible reallocation of government spectrum for existing microwave and other users is contrary to

^{6/} Id. at 2.

^{7/} Id. at 1.

the public interest. TWT submits that the preferred approach is for the FCC and NTIA to initiate discussions aimed at making underutilized federal spectrum available to non-government users, including migrating fixed microwave users in the 2 GHz non-government band. These discussions should be conducted concurrent with the FCC's deliberations in the pending proceeding.

The possible delay associated with NTIA and FCC deliberations and an OET study such as the one Petitioners propose could seriously jeopardize the prompt deployment of PCS in the United States and, therefore, should only be undertaken within the context of the instant proceeding if such action will not delay authorization of PCS according to the existing FCC timetable.^{8/}

NTIA and FCC discussions and an OET study could cause delay for various reasons. It is not yet clear, for example, that the 230 MHz of federal government spectrum in the 2 GHz band is underutilized. The study of current federal use of the 1.71-1.85 GHz and 2.20-2.29 GHz bands released in March 1992 by NTIA,^{9/} on which Petitioners rely, does not resolve this question. Because the study takes into account only unclassified government uses of spectrum, it cannot be used as the basis for

^{8/} See supra note 3.

^{9/} Federal Spectrum Usage of the 1710-1850 and 2200-2290 MHz Bands, NTIA TR 92-285 (March 1992) ("NTIA Report").

formulating accurate comparisons of federal and commercial usage or concluding that the government bands are underutilized.

B. An OET Study of the Federal 2 GHz Band Should Be Conducted

TWT supports the initiation of an OET study of the 1.71-1.85 GHz and 2.20-2.29 GHz bands. However, given the time it will take to conduct such a study and determine whether available spectrum can be allocated for non-government users, there can be no possible rationale for delaying current plans to allocate spectrum to emerging technologies. If underused spectrum is identified by OET, it may be sensible to make it available to fixed microwave operators.

Existing microwave users and the majority of government users in the 1.71-1.85 GHz band both are fixed, point-to-point microwave users that utilize standard off-the-shelf equipment.^{10/} In addition, the technical standards for microwave use in the non-government portion of the 2 GHz band and the 1.71-1.85 GHz government band are virtually identical. Existing microwave operations will not be disadvantaged by waiting for the results of an OET study because they already have spectrum allocated to them and may continue to operate on these frequencies well into the future under the Commission's proposed relocation plan. Moreover, alternative spectrum will be immediately available to those existing microwave users desiring to relocate prior to the

^{10/} See H.R. Rep. No. 102-113, 102d Cong., 1st Sess. at 16 (1991); NTIA Report at 4-3, 5-22.

time the government spectrum in the 2 GHz band might be available for their use.^{11/} On the other hand, it is not yet clear whether it will be feasible to reallocate government spectrum to PCS and other emerging technologies, and developers of these technologies will be significantly harmed by any delay in the allocation of spectrum to them. Of course, any FCC examination of the possible reallocation of such government spectrum should include an evaluation of the availability of such spectrum for private microwave users as well as emerging technologies, including PCS.

III. Any Delay in Allocating Spectrum for PCS Will Put the United States at a Competitive Disadvantage

As the FCC has noted, Canada, Europe, and Japan are developing PCS systems, and foreign governments have already moved to allocate spectrum for such services.^{12/} The Commission has correctly observed that the lack of available spectrum in the United States acts as a disincentive to American developers of

^{11/} See NPRM, ¶ 20 n. 16. The frequencies identified by the Commission as available for reallocation to existing microwave users include the 3.7-4.2, 5.925-6.425, 6.525-6.875, 10.7-11.7, 11.7-12.2, 12.7-13.25, and 17.7-19.7 GHz bands.

The World Administrative Radio Conference recently allocated the 1.85-2.025 GHz and 2.1-2.2 GHz bands to public land mobile telecommunications on a worldwide basis, and the European Community has required its members to authorize PCS in the 1.8-1.9 GHz band. These worldwide developments provide an additional reason for not losing precious time by suspending the instant proceeding until the FCC has examined the possible reallocation of government spectrum in the 2 GHz band for eventual use for emerging technologies or relocation by existing users.

^{12/} NPRM, ¶ 5.

new technologies.^{13/} On the other hand, the existing availability of uniform spectrum in most major industrial countries throughout the world is enabling major foreign competitors to obtain a head start over U.S. corporations. The competitive advantage is heightened by the significant international economies of scale such companies are able to realize. It is imperative, therefore, that the FCC continue on a fast track to authorize spectrum in the 2 GHz band for emerging technologies. This action is critical in order for U.S. companies to rapidly develop and deploy standard equipment for PCS and position themselves to compete on a level playing field with their foreign counterparts. Consequently, in order to ensure that the United States will be competitive in the worldwide PCS marketplace, the instant proceeding should not be suspended while the FCC considers the reallocation of the 2 GHz government spectrum.

IV. Petitioners Have Not Demonstrated That Current Fixed Private Microwave Users of the 2 GHz Band Would Be Harmed By the FCC's Proposed Relocation Plan

Petitioners suggest that the relocation of current users of the private fixed microwave and common carrier bands will "disrupt[] the communications systems necessary for safe and reliable operation of the railroads, electric utilities and other vital industries."^{14/} However, they have provided no evidence

^{13/} NPRM, ¶ 7.

^{14/} Petition at 2.

whatsoever of any disruption of services or threats to safety that the Commission's proposal could cause.

While TWT will comment more extensively on this issue in its comments in this proceeding on June 5, it should be emphasized now that the FCC's pending relocation proposal for existing private microwave users reflects the Commission's intention to provide adequate protection to current users of the private and common carrier fixed microwave bands.^{15/} Thus, the FCC proposes to extend blanket waivers of the eligibility requirements to all existing 2 GHz common carrier and private microwave operations which relocate to a higher frequency band. In addition, the FCC has proposed a generous transition plan which will allow current licensees to continue to occupy 2 GHz frequencies on a co-primary basis for as long as 15 years, a period which would extend through a complete amortization of existing 2 GHz equipment as well as the useful life of the equipment.^{16/} As co-primary users, they will enjoy adequate interference protection throughout the period they occupy the 2 GHz spectrum. The Commission also proposes a regulatory structure which will encourage PCS users in this spectrum to reimburse current licensees fully for all relocation costs.^{17/}

^{15/} The generosity of the proposed transition plan stands in stark contrast to the "band clearing" approach to spectrum reallocation, which has been used in the past by the Commission. NPRM, ¶ 22.

^{16/} Id. ¶ 24.

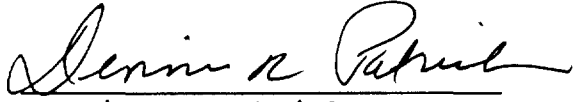
^{17/} Id., ¶ 22.

Given the FCC's proposal, Petitioners will not be harmed by Commission action in this proceeding.^{18/}

Based on the foregoing, TWT submits that no basis exists to suspend the instant proceeding in order to examine the possible reallocation of government spectrum in the 2 GHz band and urges the Commission to deny the Petition.

Respectfully submitted,

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^{18/} As the Commission has pointed out, there also are non-radio media, such as fiber optic circuits, which are available to Petitioners and which may actually suit their needs better than fixed microwave systems. See Id., ¶ 20 n. 17.

CERTIFICATE OF SERVICE

I, Dayle L. Jones, a secretary in the law firm of Akin, Gump, Hauer & Feld, hereby certify that a copy of the foregoing "Opposition to Petition to Suspend Proceeding" has been sent to the following individuals on this 23rd day of April 1992:

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